

US Serial No. 10/524699
Page 4 of 7

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Remarks:

Regarding the rejection of claims 1 – 8 under 35 USC 102(b) in view of WO 02/44314:

The applicant respectfully traverses the grounds of rejection raised by the Examiner and requests reconsideration thereof.

The applicant notes that the Examiner's grounds of rejection are based on the following remarks:

“See composition E1 on pg. 19. The composition is disclosed as comprising two, continuous, transparent phases which, upon shaking, temporarily form a creamy emulsion (para. under Table 1). The viscosities of the inventive compositions are disclosed as being at least 5 mPa.s (= 5 cP) (p. 15, top). The examiner takes the position that, due to the presence of the surfactant, some amount of water will be solubilized in the organic phase. Because the organic phase is transparent, it is a microemulsion. The perfume, being organic, will be solubilized there as well. The compositions are described in the abstract as being useful for cleaning hard surfaces, which are non-porous.” (*Office Action*, page 2)

The applicant traverses the Examiner's foregoing reasoning in supporting his rejection over the prior art WO 02/44314 reference. With regard to the Examiner's grounds of rejection under 35 USC §102(b), that statute holds in relevant part that a person shall be entitled to a patent unless “the invention was ... in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.” Unpatentability based on “anticipation” requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) (“lack of novelty (often called ‘anticipation’) requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee”). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15

US Serial No. 10/524699
Page 5 of 7

USPQ2d 1655, 1657 (Fed. Cir. 1990). It is the present applicants' position that this standard has not been met.

The Examiner's remarks are suppositions as to the behavior of the E1 composition of the WO 02/44314 reference, as nowhere does the WO 02/44314 reference specifically teach or disclose that when the E1 composition is shaken that (a) any water enters the hydrophobic phase and/or that (b) E1's hydrophobic phase is a "micro-emulsion". The only teaching which is provided by the WO 02/44314 reference is that: "*Das Mittel E1 zeigte zwei kontinuierliche, transparente Phases, die beim Schütteln temporär eine cremig aussehende Emulsion bildeten.*" , which in translation reads "The E1 material shows two continuous transparent phases, which by shaking takes on the appearance of a creamy emulsion." From the foregoing, there is not basis to conclude, nor would a skilled artisan necessarily reach the same supposition which is postulated by the Examiner in concluding that (a) water enters the hydrophobic phase when shaking occurs and/or that (b) E1's hydrophobic phase is a "micro-emulsion". It is fair to say that the overall 'creamy' appearance suggests that a non-homogenous mixture is temporarily formed which may or may not be an emulsion, but if it were an emulsion would certainly not be a "micro-emulsion" as the overall 'creamy' appearance would either defeat any visual determination if a "micro-emulsion" were being formed, but more likely suggest that a more conventional emulsion were temporarily formed. Further, it is also fair to say that shaking of the E1 composition is only taught to provide a visually 'creamy' mixture, but there is not any indication if an emulsion is formed, but for the point of argument, if an emulsion is formed there is no teaching which is derivable from the E1 which of the two separate layers of E1 forms the "dispersed" phase and which forms the "continuous" or "bulk" phase. Certainly there is also no basis from the E1 reference which teaches the formation of the more specific class of "micro-emulsion", notwithstanding the Examiner's position that "Because the organic phase is transparent, it is a microemulsion." Certainly the organic phase may be simply a clear, organic phase which comprises no dispersed material, e.g., water. There is no basis in E1 to suggest otherwise; the organic phase may be simply transparent, e.g., is not a micro-emulsion.

US Serial No. 10/524699
Page 6 of 7

Such appears to be clearly supported by the WO 02/44314 reference which only discloses that each of the phases are transparent. A skilled artisan would note that any lack of a specific teaching that micro-emulsion would take the statements of the WO 02/44314 reference at "face value" and would understand these to be separate continuous phases. Thus any supposed teaching of D1 is to be discounted.


Accordingly, reconsideration of the propriety of the rejection under 102(b) and its withdrawal is solicited.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;



Andrew N. Parfomak, Esq.
Reg.No. 32,431
Norris, McLaughlin & Marcus, PC
110 East 42nd St., 30th Floor
New York, NY 10017

Tel: 212 808-0700



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US Serial No. 10/524699
Page 7 of 7

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